

BEFORE THE UNITED STATES  
FEDERAL ELECTION COMMISSION

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2012 FEB 27 PM 2:01

FEC MAIL CENTER

Campaign Legal Center  
215 E Street NE  
Washington, DC 20002  
(202) 736-2200

v.

MUR No. 6535

Restore Our Future, Inc.  
1250 Eye Street NW  
Suite 900  
Washington, DC 20005

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
2012 FEB 27 PM 2:20  
OFFICE OF GENERAL  
COUNSEL

COMPLAINT

1. This complaint is filed pursuant to 2 U.S.C. § 437g(a)(1) and is based on information and belief that Restore Our Future, Inc. ("Restore Our Future"), an independent expenditure-only committee, made an in-kind contribution to presidential candidate Mitt Romney in violation of provisions of the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 431, *et seq.*, and Commission regulations.
2. Specifically, based on published reports, complainant has reason to believe that Restore Our Future financed the dissemination, distribution, or republication of campaign materials prepared by candidate Mitt Romney or his agent(s). Under 11 CFR § 109.23, such financing "shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure"—*i.e.*, shall be considered a contribution by Restore Our Future.
3. As an independent expenditure-only committee, Restore Our Future is prohibited from contributing to presidential candidate Mitt Romney. *See* Ad. Op. 2010-11 (Commonsense Ten).

4. Federal law prohibits any person from making contributions exceeding \$2,500 to a candidate's authorized political committee. *See* 2 U.S.C. § 441a(a)(1)(A); 11 CFR § 110.1(b).<sup>1</sup>
5. Federal law prohibits political committees from knowingly making any expenditure in violation of federal law and, further, prohibits any officer or employee of a political committee from knowingly making any expenditure on behalf of a candidate in violation of any limitation imposed on contributions and expenditures. *See* 11 CFR § 110.9.
6. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission shall make an investigation of such alleged violation . . . ." 2 U.S.C. § 437g(a)(2); *see also* 11 CFR § 111.4(a) (emphasis added).

#### BACKGROUND

7. On February 23, Politico reported:

The pro-Romney super PAC Restore Our Future is out with a new ad, "Saved," that features the time when Romney helped track down the 14-year-old daughter of a Bain Capital colleague. The footage in the ad appears identical to a Romney for President ad released in 2007, during Romney's last run for president: same music, same images, and same narration from Robert Gay, the father of the missing girl.

In the ad, Gay says Romney "stepped forward to take charge" when he found out Gay's daughter had gone missing.

"He closed the company and brought almost all our employees to New York," he says. "He said I don't care how long takes, we're going to find her. He set up a command center and searched through the night."

Per an ROF official, the ad is airing in both Arizona and Michigan in advance of next Tuesday's primaries.<sup>2</sup>

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<sup>1</sup> *See also* FEC, *Contribution Limits for 2011-2012* (consumer price index adjustments to statutory limits), available at <http://www.fec.gov/info/contriblimits1112.pdf>.

8. The February 23 report on the Politico website includes both ads as embedded videos. Complainant reviewed both videos and confirmed that the videos appear identical, with the only exception being the final frame of each ad containing "paid for by" disclaimers. The version of the ad distributed by presidential candidate Mitt Romney, titled "The Search" on the Politico website, concludes with the disclaimer: "PAID FOR BY ROMNEY FOR PRESIDENT, INC. APPROVED BY MITT ROMNEY." The version of the ad distributed by Restore Our Future, titled "Saved" on the Politico website, concludes with the disclaimer: "PAID FOR BY RESTORE OUR FUTURE, INC., WHICH IS RESPONSIBLE FOR THE CONTENT OF THIS MESSAGE."<sup>3</sup>

**"DISSEMINATION, DISTRIBUTION, OR REPUBLICATION OF CANDIDATE CAMPAIGN MATERIALS"**  
**UNDER FEDERAL LAW**

9. Commission regulation 109.23 provides:

The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's authorized committee, or an agent of either of the foregoing shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities of the person making the expenditure. The candidate who prepared the campaign material does not receive or accept an in-kind contribution, and is not required to report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37.

11 CFR § 109.23(a) (emphasis added).

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<sup>2</sup> Emily Schultheis, *Pro-Romney super PAC runs footage from Romney '07 ad*, POLITICO, Feb. 23, 2012, available at <http://www.politico.com/blogs/burns-haberman/2012/02/proromney-super-pac-runs-footage-from-romney-ad-115370.html> (last visited Feb. 24, 2012).

<sup>3</sup> *Id.*

10. Subsection (b) of section 109.23 provides five exceptions to the general rule treating the financing of republication of campaign materials as a contribution by the republisher— (1) republication by the candidate who prepared the material, (2) republication of material by an opponent of the candidate who prepared the material, (3) press exemption, (4) brief quote of material by a person expressing her own views, and (5) republication by a party committee as a coordinated expenditure. None of these exceptions apply to Restore Our Future's republication of Mitt Romney ad at issue here. See 11 CFR § 109.23(b).

11. The Commission explained this rule as follows:

[W]hether or not the dissemination, distribution, or republication qualifies as a coordinated communication under 11 CFR 109.21, paragraph (a) of section 109.23, like former section 109.1(d)(1), requires the person financing such dissemination, distribution, or republication always to treat that financing, for the purposes of that person's contribution limits and reporting requirements, as an in-kind contribution made to the candidate who initially prepared the campaign material. In other words, the person financing the communication must report the payment for that communication if that person is a political committee or is otherwise required to report contributions. Furthermore, that person must count the amount of the payment towards that person's contribution limits with respect to that candidate under 11 CFR 110.1 (persons other than political committees) or 11 CFR 110.2 (multicandidate political committees), and with respect to the aggregate biannual contribution limitations for individuals set forth in 11 CFR 110.5.

*Coordinated and Independent Expenditures, Final Rules & Explanation & Justification,* 68 Fed. Reg. 421, 442 (Jan. 3, 2003) (emphasis added).

12. The Commission went on to explain that a commenter in the rulemaking proceeding had proposed an exception from the rule "to cover republication and distribution of original campaign material that already exists in the public domain, such as presentations made by candidates, biographies, positions on issues or voting records." *Id.* The Commission, however, "declin[ed] to promulgate a 'public domain' exception because such an

exception could 'swallow the rule,' given that virtually all campaign material that could be republished could be considered to be 'in the public domain.'" *Id.*

13. The Commission elaborated on the intersection between this "dissemination, distribution, or republication" rule and the rule on "coordinated communications" at 11 CFR § 109.21, explaining: "In the event that a campaign retains the copyright to its campaign materials, and the campaign materials are thus not in the public domain as a matter of law, this means that the republisher would presumably have to obtain permission from the campaign to republish the campaign materials, raising issues of authorization or coordination." 68 Fed. Reg. at 442-43.
14. Based on published reports regarding the ads "The Search" and "Saved," complainant has reason to believe that Restore Our Future has financed the republication of an ad "prepared by" presidential candidate Mitt Romney or his agent(s). This financing by Restore Our Future, therefore, "shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities" of Restore Our Future under 11 CFR § 109.23(a) (emphasis added).

**PROHIBITION ON CONTRIBUTIONS BY INDEPENDENT EXPENDITURE-ONLY COMMITTEES**

15. In Advisory Opinion 2010-11 (Commonsense Ten), the Commission interpreted and applied court decisions in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) and *Citizens United v. FEC*, 130 S. Ct. 876 (2010), and opined that a committee that "intends to make only independent expenditures" and that "will not make any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization" is permitted to solicit and accept unlimited

contributions from individuals, corporations, labor organizations and other political committees. Ad. Op. 2010-11 at 2-3.

16. The Commission included as "Attachment A" to Advisory Opinion 2010-11 a form letter to be used by such newly-sanctioned "independent expenditure-only" committees when registering with the Commission. The form letter indicates the committee's intention to raise unlimited funds and states: "This committee will not use those funds to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees."
17. Restore Our Future registered with the Commission as an independent expenditure-only committee, stating in a letter to the Commission dated June 24, 2011, attached to its Statement of Organization, that it would not use its funds "to make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates or committees."
18. Based on published reports, complainant has reason to believe that Restore Our Future violated the requirement that it not "make contributions, whether direct, in-kind, or via coordinated communications, to federal candidates" by financing republication of campaign materials prepared by presidential candidate Mitt Romney or his agent(s), which "shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities" of Restore Our Future under 11 CFR § 109.23.

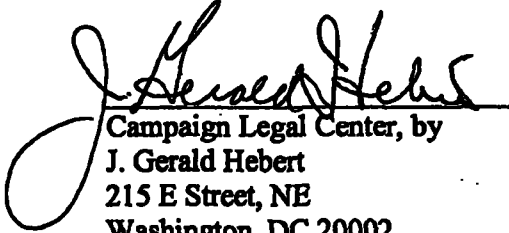
**PRAYER FOR RELIEF**

19. Wherefore, the Commission should find reason to believe that Restore Our Future has violated 2 U.S.C. § 431 *et seq.*, including 2 U.S.C. § 441a as applied by 11 CFR § 109.23, and conduct an immediate investigation under 2 U.S.C. § 437g(a)(2). Further, the

Commission should determine and impose appropriate sanctions for any and all violations, should enjoin the respondents from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

February 27, 2012

Respectfully submitted,



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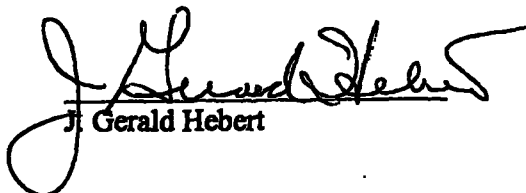
Counsel to the Campaign Legal Center

**VERIFICATION**


The complainant listed below hereby verifies that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.

**For Complainant Campaign Legal Center**

  
J. Gerald Hebert

Sworn to and subscribed before me this 27 day of February, 2012.

  
Notary Public

SHARON BRUNTON  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires May 31, 2013